

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

WILLIAM RAY JACOBS, #775076

§

VS.

§

CIVIL ACTION NO. 6:13cv973

JIM WHEELER

§

ORDER OF DISMISSAL

Plaintiff William Ray Jacobs, an inmate confined in the Texas prison system, proceeding *pro se*, filed this lawsuit in an effort to obtain DNA testing in conjunction with his state criminal conviction. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Second Report and Recommendation (Docket Entry #15) concluding that the case should be dismissed. In response, Plaintiff filed a motion for submission of amended complaint and objections (Docket Entry #22).

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the amended complaint and objections raised by Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of Plaintiff are without merit. The Court is obligated to follow the Fifth Circuit's decision issued in *Elam v. Lykos*, 470 F. App'x 275 (5th Cir. 2012). The facts of this case are indistinguishable from the facts in *Elam*; thus the case should likewise be dismissed for failure to state a claim upon which relief may be granted and as frivolous. *Id.* at 276. Therefore the Court

hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the civil rights complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 8th day of May, 2014.

A handwritten signature in black ink, appearing to read 'Leonard Davis', is written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE